

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: TN 03-22	2. STATE: Minnesota
FOR: HEALTH CARE FINANCING ADMINISTRATION		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE July 1, 2003	
5. TYPE OF PLAN MATERIAL (<i>Check One</i>):			
<input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (<i>Separate Transmittal for each amendment</i>)			
6. FEDERAL STATUTE/REGULATION CITATION § 1917(c) of the Social Security Act 42 U.S.C. 1396p(c)		7. FEDERAL BUDGET IMPACT: a. FFY 03 \$(3080) <i>K</i> b. FFY 04 \$(1,280) <i>K</i> \$(15,322) <i>K</i>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: SUPPLEMENT 9 TO ATTACHMENT 2.6-A, Pages 1-9		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): SUPPLEMENT 9 TO ATTACHMENT 2.6-A, Pages 1-9	
10. SUBJECT OF AMENDMENT: Clarify policies for uncompensated asset transfers.			
11. GOVERNOR'S REVIEW (<i>Check One</i>):			
<input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: // Mary B. Kennedy -- signature //		16. RETURN TO: Stephanie Schwartz Federal Relations Unit Minnesota Department of Human Services 444 Lafayette Road No. St. Paul, MN 55155-3852	
13. TYPED NAME: Mary B. Kennedy			
14. TITLE: Medicaid Director			
15. DATE SUBMITTED: August 11, 2003			

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17. DATE RECEIVED: 8/11/03	18. DATE APPROVED: 11/1/03 RECEIVED
PLAN APPROVED - ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: July 1, 2003	20. SIGNATURE OF REGIONAL OFFICIAL: <i>[Signature]</i> 2003
21. TYPED NAME: Cheryl A. Harris	22. TITLE: Associate Director of Administration, DMCH

Transfer of Assets

~~For uncompensated transfers occurring on or after April 13, 1996:~~

~~The policies for transfers occurring on or after August 11, 1993 apply with the following changes:~~

~~A period of ineligibility, including partial months, shall be based on the total uncompensated value of the assets transferred divided by the average Medicaid rate for nursing facility services in the State in effect on the date of application. However, the ineligibility provisions described in this paragraph shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling \$500 or less if the total value of uncompensated transfers in a month does not exceed \$500.~~

~~For uncompensated transfers occurring on or after January 1, 1994 through April 13, 1996:~~

~~The policies for transfers occurring on or after August 11, 1993 apply with the following changes:~~

~~A period of ineligibility, including partial months, shall be based on the total uncompensated value of the assets transferred divided by the average Medicaid rate for nursing facility services in the State in effect on the date of application. However, the ineligibility provisions described in this paragraph shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling \$1000 or less if the total value of uncompensated transfers in a month does not exceed \$1000.~~

For uncompensated transfers occurring on or after August 11, 1993:

Ineligibility for long term care services. A period of ineligibility for Medicaid payment for long term care services is provided for any institutionalized individual (including an individual receiving home and community based services under §1915(c) of the Act) who at any time during or after the designated look-back period immediately prior to the date the individual is both an institutionalized individual and has applied for or is receiving Medicaid, disposed of assets for less than fair market value; unless those assets were disposed of in one of the following manners:

Allowable Transfers.

- The client or the client's spouse transfers excluded assets other than a homestead or other real property.

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- The client or the client's spouse transfers non-excluded assets or a homestead and provides convincing evidence of intent to receive fair market value.
 - The client or the client's spouse transfers non-excluded assets or a homestead and provides convincing evidence to show the purpose of the transfer was not to obtain or maintain Medicaid. Preservation of the estate for heirs is not acceptable as "another purpose". Convincing evidence would have to show that the individual or spouse had no reason to believe that Medicaid might be needed. The sudden loss of income or assets, the sudden onset of a disabling condition or personal injury may provide convincing evidence.
 - If the client entered long term care prior to October 1, 1989, the client transferred assets to a spouse in accordance with the inter-spousal transfer policies applicable to transfers occurring prior to July 1, 1988; or if the client entered long term care on or after October 1, 1989, the client transferred assets to a spouse as specified in § 1924 of the Act.
 - The client or the client's spouse transferred assets to a representative of the spouse, provided the transferred assets are to be used for the sole benefit of the client's spouse.
 - The client or the client's spouse transferred non-excluded assets or a homestead to his or her child of any age who is blind or permanently and totally disabled.
 - The client transferred a homestead to a spouse.
 - The client or the client's spouse transferred a homestead to his or her:
 - Child under age 21.
 - Child of any age who lived in the home for at least 2 years before the client entered the long term care facility and who provided verifiable care (physician's statement of needed care) that helped the client remain at home rather than in a facility.
 - Sibling who has equity interest in the home and who lived in the home at least 1 year immediately before the client entered the long term care facility.

When the transfer of a homestead is exempt from penalty, it may be transferred while occupied or while vacant. It does not have to be the primary residence of the person receiving the transferred homestead.

- The client or the client's spouse transfers assets into a trust established solely for a son or a daughter of any age who is blind or disabled.
- The client or the client's spouse transfers assets into a trust established solely for any disabled person under age 65.

Long term care services defined. The term "long term care services" means nursing facility services (including those provided in a swing-bed of an inpatient hospital), ICF/MR services, and § 1915(c) home and community based services.

Designated look-back period. The look-back period for transfers is 36 months, except For transfers into and from trusts which cannot be paid to or for the benefit of the Individual under any circumstances, for which the look-back period is 60 months.

Period of ineligibility. The period of ineligibility for long term care services is calculated by dividing the total uncompensated transfer amount by the statewide average monthly Medicaid rate for nursing facility (NF) services in effect on the date of application. The average NF rate is adjusted annually on July 1 to reflect the payment rate for the previous calendar year. The period of ineligibility begins the month following the month in which the transfer occurred if no other transfers are made during the running of that penalty period. When transfers made in one or more months would result in overlapping penalty periods if the transfers were calculated separately, or if the uncompensated transfers in amounts less than the average NF rate are made during such overlapping penalty periods, the values of all the uncompensated assets transferred are added together and an ineligibility period is recalculated. The period of ineligibility then begins in the month following the month in which the first transfer occurred.

If an uncompensated transfer made prior to August 11, 1993 results in an ineligibility period that would overlap with an ineligibility period calculated on an uncompensated transfer made on or after August 11, 1993, the ineligibility period for the transfer made on or after August 11, 1993 begins after the first ineligibility period expires.

For uncompensated transfers occurring on or after January 1, 1994 through April 13, 1996: A period of ineligibility, including partial months, shall be based on the total uncompensated value of the assets transferred divided by the average Medicaid rate for nursing facility services in the State in effect on the date of application. However, the ineligibility provisions described in this section shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling \$1000

or less if the total value of uncompensated transfers in a month does not exceed \$1000.

For uncompensated transfers occurring on or after April 13, 1996:

The ineligibility provisions described in this section shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling \$500 or less if the total value of uncompensated transfers in a month does not exceed \$500.

For uncompensated transfers occurring on or after July 1, 2002:

The ineligibility provisions described in this section shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling \$200 or less if the total value of uncompensated transfers in a month does not exceed \$200.

Ineligibility for community spouse transfers. A period of ineligibility will also be calculated if a community spouse transfers assets without receiving adequate compensation. The period of ineligibility is applied to the institutionalized spouse unless the community spouse is also receiving Medicaid payment for long term care services, in which case the penalty is applied only to the spouse who transferred the assets.

Undue hardship waivers. The penalty of restricted coverage may be waived on the basis of undue hardship due to denial of medical assistance eligibility. Undue hardship must be based on an imminent threat to the client's health and well being because no other care of the person is available.

~~**Cause of action for failure to disclose.** If the applicant or the enrollee or applicant's or enrollee's authorized representative, at the time of application, failed to report a transfer of assets and the local agency is reasonably certain that the applicant or the applicant's authorized representative was aware of the transfer of assets, a cause of action exists against the person who received the transferred property if medical assistance for long term care services was received during the period of ineligibility. The Medicaid agency shall collect the lesser of:~~

- ~~(1) — the cost of medical assistance paid for long term care services during the penalty period; or~~
- ~~(2) — the uncompensated value of transferred property.~~

For uncompensated transfers occurring since July 1, 1990:

~~The policies for transfers occurring since July 1, 1988 apply in addition to the following:~~

~~A period of ineligibility will also be calculated if a community spouse transfers assets without receiving adequate compensation. The period of ineligibility is applied to the institutionalized spouse unless the community spouse is also receiving long term care services, in which case the penalty is applied only to the spouse who transferred the assets.~~

STATE: MINNESOTA
Effective: July 1, 2003
TN: 03-22
Approved: NOV 07 2003
Supercedes: 96-17

SUPPLEMENT 9 TO
ATTACHMENT 2.6-A
Page 5

For transfers occurring prior to July 1, 1988:

For uncompensated transfers of non-exempt assets occurring within 24 months preceding application or while receiving Medical Assistance, a period of ineligibility for Medical Assistance shall result. The period of ineligibility is determined by dividing the uncompensated transfer amount by the statewide average payment for skilled nursing facility services for the previous calendar year.

The result after truncating, is the number of months of ineligibility beginning with the latter of the month of transfer or the month the transfer becomes known to the agency. The value of any transferred property is added to other assets to determine if the individual is within the MA asset limit.

No individual is ineligible as determined above if:

- A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and return to the home which was transferred for less than fair market value;
- Title to the home was transferred to the individual's spouse or child who is under age 21, or is blind or permanently and totally disabled.
- A satisfactory showing is made to the agency that the individual intended to dispose of the home either at fair market value or for other value consideration; or
- The agency determines that denial of eligibility due to transfer of the homestead would work an undue hardship.
- At the time of the initial approved application, the transfer was made by an institutionalized spouse to his or her non-institutionalized spouse if all of the following conditions are met:
 - (1) The non-institutionalized spouse is not a Medical Assistance applicant or recipient.
 - (2) Either (a) the non-institutionalized spouse has less than \$10,000 in countable assets, including all assets owned singly and 50 percent of assets owned jointly by both spouse; or (b) the non-institutionalized spouse has less than 60 percent of the total value of nonexempt assets owned by both spouses.

The amount transferred, together with the amount of assets described in item 2 above, total not more than one-half of the total value of the liquid assets of the parties or \$10,000, whichever is greater.

- (3) The non-institutionalized spouse has verified the value of his/her assets.
- (4) The transfer occurs between the first of the month before the month of application and 15 days after the local agency notified the applicant of the need to reduce excess assets to gain eligibility, or the date of the local agency decision on the application, whichever is later. Transfers occurring outside of these time limits do not qualify for this exclusion.

For uncompensated transfers occurring since July 1, 1988:

A period of ineligibility for Medicaid payment for long term care services (including nursing facility services provided in a swingbed, institution for mental diseases, ICF/MR, Christian Science sanatoria, on an Indian reservation, or home and community based waiver services) is provided for any institutionalized individual (this includes an individual receiving home and community based services under § 1915 © of the Act) who, at any time during or after the 30-month period immediately before:

- the date the individual becomes an institutionalized individual (if the individual is entitled to Medicaid on the date of institutionalization); or
- the date the individual applies for such assistance while an institutionalized individual (if the individual was not entitled to Medicaid on the date of institutionalization),

disposed of assets for less than fair market value; unless those assets were disposed of in one of the following manners:

- The client or the client's spouse transfers excluded assets other than a homestead or other real property.
- The client or the client's spouse transfers non-excluded assets or a homestead and provides convincing evidence of intent to receive fair market value.
- The client or the client's spouse transfers non-excluded assets or a homestead and provides convincing evidence to show the purpose of the transfer was not to obtain or maintain payment of long term care services for the client. Preservation of the estate for heirs is not acceptable as "another purpose". Convincing evidence would have to show that the individual had no reason to believe that long term care services might be needed. The sudden loss of income or assets, the sudden onset of a disabling condition or personal injury may provide convincing evidence.

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- If the client entered long term care prior to October 1, 1989, the client transferred assets to a spouse in accordance with the inter-spousal transfer policies applicable to transfers occurring prior to July 1, 1988; or if the client entered long term care on or after October 1, 1989, the client transferred assets to a spouse as specified in § 1924 of the Act.
 - The client or the client's spouse transferred assets to a representative of the spouse, provided the transferred assets are to be used for the sole benefit of the client's spouse.
 - The client or the client's spouse transferred non-excluded assets or a homestead to his or her child of any age who is blind or permanently and totally disabled.
 - The client transferred a homestead to a spouse or the client or the client's spouse transferred a homestead to his or her:
 - Child under age 21
 - Child of any age who lived in the home for at least 2 years before the client entered the long term care facility and who provided verifiable care (physician's statement of needed care) that helped the client remain at home rather than in a facility.
 - Sibling who has equity interest in the home and who lived in the home at least 1 year immediately before the client entered the long term care facility.

When the transfer of a homestead is exempt from penalty, it may be transferred while occupied or while vacant. It does not have to be the primary residence of the person receiving the transferred homestead.

The penalty of restricted coverage may be waived on the basis of undue hardship due to denial of medical assistance eligibility. Undue hardship must be based on an imminent threat to the client's health and well being because no other care of the person is available.

The period of ineligibility for long term care services is calculated by dividing the total uncompensated transfer amount by the statewide average Medicaid rate for skilled nursing facility (SNF) services (nursing facility services effective October 1, 1990) in effect on the date of application or the date the transfer becomes known to the local agency. The average rate is adjusted annually on July 1 to reflect the payment rate for the previous calendar year. The period of ineligibility begins the month the transfer occurred. The period of ineligibility cannot exceed 30 months. If the uncompensated transfer amount is less than the average SNF rate, eligibility for long term care services is not affected.

If the applicant or the applicant's authorized representative, at the time of application, failed to report a transfer of assets and the local agency is reasonably certain that the applicant or the applicant's authorized representative was aware of the transfer of assets, a cause of action exists against the person who received the transferred property if medical assistance for long term care services was received during the period of ineligibility. The Medicaid agency shall collect the lesser of:

- (1) the cost of medical assistance paid for long term care services during the penalty period; or
- (2) the uncompensated value of transferred property.

For uncompensated transfers occurring since July 1, 1990: A period of ineligibility will also be calculated if a community spouse transfers assets without receiving adequate compensation. The period of ineligibility is applied to the institutionalized spouse unless the community spouse is also receiving long term care services, in which case the penalty is applied only to the spouse who transferred the assets.

For transfers occurring prior to July 1, 1988:

~~For uncompensated transfers of non-exempt assets occurring within 24 months preceding application or while receiving Medical Assistance, a period of ineligibility for Medical Assistance shall result. The period of ineligibility is determined by dividing the uncompensated transfer amount by the statewide average payment for skilled nursing facility services for the previous calendar year.~~

~~The result after truncating, is the number of months of ineligibility beginning with the latter of the month of transfer or the month the transfer becomes known to the agency. The value of any transferred property is added to other assets to determine if the individual is within the MA asset limit.~~

~~No individual is ineligible as determined above if:~~

- ~~• A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and return to the home which was transferred for less than fair market value;~~
- ~~• Title to the home was transferred to the individual's spouse or child who is under age 21, or is blind or permanently and totally disabled.~~
- ~~• A satisfactory showing is made to the agency that the individual intended to dispose of the home either at fair market value or for other value consideration; or~~

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- ~~The agency determines that denial of eligibility due to transfer of the homestead would work an undue hardship.~~
 - ~~At the time of the initial approved application, the transfer was made by an institutionalized spouse to his or her non-institutionalized spouse if all of the following conditions are met:~~
 - (4) ~~The non-institutionalized spouse is not a Medical Assistance applicant or recipient.~~
 - (5) ~~Either (a) the non-institutionalized spouse has less than \$10,000 in countable assets, including all assets owned singly and 50 percent of assets owned jointly by both spouse; or (b) the non-institutionalized spouse has less than 60 percent of the total value of nonexempt assets owned by both spouses.~~
 - (6) ~~The amount transferred, together with the amount of assets described in item 2 above, total not more than one-half of the total value of the liquid assets of the parties or \$10,000, whichever is greater.~~
 - (7) ~~The non-institutionalized spouse has verified the value of his/her assets.~~
 - (8) ~~The transfer occurs between the first of the month before the month of application and 15 days after the local agency notified the applicant of the need to reduce excess assets to gain eligibility, or the date of the local agency decision on the application, whichever is later. Transfers occurring outside of these time limits do not qualify for this exclusion.~~